

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

VALERIE J. SLAUTER,

Plaintiff,

:

Case No. 3:08-cv-068

-vs-

District Judge Walter Herbert Rice
Chief Magistrate Judge Michael R. Merz

:

NATIONAL CITY CORPORATION,
etc., et al.,

Defendants.

DECISION AND ORDER

This case is newly-referred to the undersigned and is pending on Defendants' Motion to Dismiss the Complaint (Doc. No. 10) and Plaintiff's Motion to File a First Amended Complaint (Doc. No. 12).

While the parties have written eloquently on the underlying issues, they have disregarded a basis procedural point about the case: because Defendants had not answered, Plaintiff does not require court permission to file an amended complaint, whether or not the amended complaint could survive a motion to dismiss under Fed. R. Civ. P. 12. Rather, Fed. R. Civ. P. 15 permits a plaintiff to amend once as a matter of course at any time before a responsive pleading is filed. A motion to dismiss is not a "responsive pleading" under Fed. R. Civ. P. 7. The only permission Plaintiff requires is for joinder of an additional party under Fed. R. Civ. P. 21. Because the additional party may be needed for a complete adjudication of this matter, that permission is granted. (I.e., Doc. No. 12 is granted in part and found moot in part.)

Plaintiff shall forthwith file her First Amended Complaint and obtain service or waiver of

service on the added party. Because it relates to the Complaint rather than the First Amended Complaint, Defendants' Motion to Dismiss (Doc. No. 10) is found moot without prejudice to renewal of the arguments made therein in response to the First Amended Complaint.

June 18, 2008.

s/ **Michael R. Merz**
Chief United States Magistrate Judge